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February 28, 2001

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VIA COURIER

Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Application by Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks, Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts, CC Docket No. 01-9*


Dear Ms. Salas:

Enclosed please find for filing the original plus one copy of the Reply Comments of the United States Internet Service Provider Alliance ("USISPA") in the above-captioned docket. Twelve (12) copies of these comments have been delivered to the Common Carrier Bureau.

Also enclosed is a copy marked "Stamp In." Kindly stamp this copy and return with the courier for our files.

Please do not hesitate to contact me with any questions or concerns.

Sincerely,


Stephanie A. Joyce
Associate

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Enclosures

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20054

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FEB 28 2001

In the Matter of

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Application by Verizon New England, Inc.,
Bell Atlantic Communications, Inc. (d/b/a
Verizon Long Distance), NYNEX Long
Distance Company (d/b/a Verizon Enterprise
Solutions), and Verizon Global Networks, Inc.,
For Authorization to Provide In-Region,
InterLATA Services in Massachusetts

CC Docket No. 01-9

REPLY COMMENTS OF THE
UNITED STATES INTERNET SERVICE PROVIDER ALLIANCE

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Dated: February 28, 2001

SUMMARY

Verizon should not receive Section 271 interLATA relief based on the record in this proceeding. Both the United States Department of Justice and the Massachusetts Attorney General share this conclusion. Verizon's inability to provide working loops within a reasonable interval, its failure to equip its central offices ("COs") properly for the provision of line sharing, and its intransigence in providing accurate xDSL loop make-up information have all been demonstrated by these offices and by the DSL carriers that remain to tell the tale. Nothing in Verizon's Supplemental Filing, with its cosmetically-altered provisioning numbers and eleventh-hour (and legally irrelevant) promises of future performance, should convince the Commission that Verizon has satisfied Congress's competitive checklist in Section 271.

The United States Internet Service Provider Alliance ("USISPA") is interested in this proceeding only insofar as the Commission's review of Verizon's application reflects an assessment of Verizon's compliance with its market-opening obligations for broadband Internet access. The members of USISPA must depend on Verizon's compliance with the procompetitive measure of the 1996 Act in order to serve customers. Were Verizon to comply with the 1996 Act, its entry into the long-distance market should be assured. USISPA files these Reply Comments as a means of informing the Commission that Verizon has not so complied.

Notwithstanding its voluminous re-filed application, Verizon has failed to address the Commission's myriad, significant concerns regarding Verizon's provisioning of xDSL loops. The record shows that Verizon still does not provide CLECs with working xDSL loops in the same time and manner in which it provides those loops to itself or to its own affiliate. The record also shows that, in disregard for the clear orders of the Commission, Verizon still cannot provide shared loops in over 100 COs in New York and Massachusetts almost one year after legally obligated to do so. Finally, the record shows that CLECs still cannot obtain complete and accurate information about

the physical make-up of a loop, which precludes them from ascertaining the type and level of service it may provide a customer, or indeed whether the loop can support DSL technology in the first instance.

As a result of these shortcomings, Verizon has effectively won its “war of attrition” against its competitors:¹ four DSL providers have ceased services during the pendency of Verizon’s 271 quest, with another likely to follow.² These companies’ exits from the Massachusetts market is *prima facie* evidence that Verizon has not opened its market to competitors as Section 271 requires. As a result of this attrition, the members of USISPA have five fewer choices of DSL partner to support their services, reinforcing Verizon’s “last mile” monopoly. Even worse, by denying Massachusetts consumers of meaningful choice of high-speed, high-resolution Internet access, the state of local competition in Massachusetts certainly contradicts Congress’s desire to “secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies[.]”³

For these reasons, USISPA concludes, as do all but two commenters in this proceeding, that grant of Section 271 relief to Verizon would not be in the public interest. The Commission should therefore hold Verizon’s application in abeyance pending Verizon’s submission of complete, verified and meaningful evidence that it provides working xDSL-capable loops, DSL line sharing, and xDSL loop make-up information in the intervals and the manner prescribed by the FCC and the Massachusetts Department of Telecommunications and Energy (“DTE”). If to hold the application in abeyance would overrun the Commission’s statutory deadline for review, 47 U.S.C. § 271(d)(3), the Commission should direct Verizon to withdraw its application and refile when complete. In the alternative, if the Commission determines that grant of Section 271 relief is proper, it should grant

¹ Comments of Covad Communications Company (redacted) at 5 (Feb. 8, 2001).

² *Id.* at 5-6.

³ H.R. Rep. No. 104-204, 104th Cong. 1st Sess. 1 (1996).

such relief subject to procompetitive conditions that include specific performance measurements and meaningful penalties for noncompliance and backsliding. Only by taking one of these actions can the Commission preserve what remains of DSL competition in Massachusetts.

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Before the
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Bell Atlantic Communications, Inc. (d/b/a)	
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Distance Company (d/b/a Verizon Enterprise)	
Solutions), and Verizon Global Networks, Inc.,)	
For Authorization to Provide In-Region,)	
InterLATA Services in Massachusetts)	

REPLY COMMENTS OF THE
UNITED STATES INTERNET SERVICE PROVIDER ALLIANCE

The United States Internet Service Providers Alliance ("USISPA") hereby submits these Reply Comments pursuant to the notice of the Federal Communications Commission ("FCC" or "Commission")⁴ seeking comment on the Supplemental Filing of Verizon New England ("Verizon") seeking authorization to provide InterLATA telecommunications services in Massachusetts under Section 271 of the Telecommunications Act of 1996.⁵ Through its own experience, and having reviewed the record in this proceeding, USISPA is certain that Verizon has failed to open its local network to the provision of competitive advanced services, notably Digital Subscriber Line ("DSL") services, and that approval of its application is plainly not in the public interest. USISPA therefore urges the Commission to (1) hold Verizon's application for 271 authorization in abeyance pending Verizon's conclusive demonstration that it provides CLECs with quality xDSL loops, line sharing, and loop make-up information in a timely and efficient manner in accordance with Checklist Item 4, 47 U.S.C. § 271(c)(2)(B)(iv), or (2) in the alternative, prescribe specific xDSL-loop provisioning

⁴ CC Docket No. 01-9, Public Notice, "Comments Requested on the Application by Verizon New England Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Massachusetts," DA 01-106 (Jan. 16, 2001).

⁵ Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§ 160 *et seq.* (West 1997).

conditions, including penalties, to ensure that Verizon achieves and maintains the required level of nondiscriminatory xDSL loop provisioning upon its entry into the long distance market.

INTRODUCTION

USISPA <www.usispa.org> is a nationwide grassroots association of more than 800 independent ISPs, sponsored by the Commercial Internet eXchange (“CIX”), which comprises one of the nation’s largest groups of telecommunications end users and Internet access suppliers. USISPA was formed to advocate for the creation and fostering of a robust and competitive Internet for all consumers. As part of this mission, USISPA works to ensure that the incumbent local exchange carriers (“ILECs”), including Verizon, open their local networks to competitive LECs (“CLECs”) in a commercially meaningful way, especially with respect to those facilities, such as xDSL-related facilities, that provide American consumers with access to the Internet. Development of a competitive market in Internet access is crucial to this nation’s goal of empowering consumers to attain a higher quality of education, information, entertainment and health services through the Internet.

Section 271 Requirements

Section 271 permits ILECs to provide in-region interLATA telecommunications services if they demonstrate to the relevant state commission and the FCC that their local network is open to competitive telecommunications providers. This condition may be satisfied in either of two ways: Track A, which indicates that the ILEC has executed interconnection agreements through which its competitors have nondiscriminatory access to its network;⁶ or Track B, which indicates that the ILEC provides each of 14 network components and functionalities identified by Congress as crucial to local competition.⁷ If an ILEC satisfies one of these requirements through a preponderance of

⁶ 47 U.S.C. § 271(2)(A).

⁷ *Id.* § 271(2)(B).

the evidence,⁸ its state commission and the FCC may approve its application as “consistent with the public interest, convenience, and necessity.”⁹

These comments focus on Verizon’s obligations under Checklist Item 4 with respect to DSL-related services. Item 4 of the competitive checklist of Section 271 requires an ILEC applicant to demonstrate that it provides “local loop transmission from the central office to the customer’s premises, unbundled from local switching or other services.”¹⁰ Consistent Commission precedent since 1996 has held that xDSL-capable loops are among the “local loop transmission facilities” that ILECs must provide pursuant to Item 4.¹¹ ILECs must also provide complete and accurate information about the physical make-up of a loop, including its length, gauge, substance (copper or fiber) and the presence of load coils, bridged taps and repeaters.¹² In addition to these loop facilities, the FCC has required since 1999 that ILECs provide the “high-frequency portion of the loop” to DSL carriers via “line sharing” (ILEC-CLEC shared loop)¹³ and “line-splitting” (CLEC-CLEC shared loop).¹⁴ In fact, the Commission has expressly held that “we expect Bell Operating Companies to demonstrate, in the context of section 271 applications, that they permit line splitting, by providing access to network elements necessary for competing carriers to provide line-split services.”¹⁵ Thus, Verizon bears the burden of proof that it provides line sharing, as well as working xDSL-capable loops and loop information, in a timely and efficient manner. As the Commission

⁸ *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Rcd. 20,543, 20,568 (1997) (“*Ameritech Michigan 271 Order*”).

⁹ 47 U.S.C. § 271(d)(3).

¹⁰ 47 U.S.C. § 271(c)(2)(B)(iv).

¹¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-68, Third Report and Order, FCC 99-238 ¶ 176 (rel. Nov. 5, 1999) (“*UNE Remand Order*”); First Report and Order, 11 FCC Rcd. 15,499, 15,691 (1996) (“*Local Competition First Report and Order*”).

¹² *UNE Remand Order* ¶¶ 427-428; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 98-188 ¶ 56 (rel. Aug. 7, 1998) (“*Advanced Services First Report and Order*”).

¹³ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Third Report and Order, 14 FCC Rcd. 20,912, 20,914 (1999) (“*Line Sharing Order*”), *recon.* FCC 01-26 (rel. Jan. 8, 2001) (“*Line Sharing Reconsideration Order*”).

¹⁴ *Line Sharing Reconsideration Order* ¶ 20.

¹⁵ *Line Sharing Reconsideration Order* ¶ 20 n.36.

has stated, “the ultimate burden of persuasion never shifts from the BOC” during review under Section 271.¹⁶

The Record in This Proceeding

This Verizon application is its second covering in-region interLATA services in the state of Massachusetts. Verizon withdrew its first application on December 18, 2000, at which time then-Chairman Kennard stated that any subsequent Verizon application must address three key issues, specifically, Verizon’s xDSL loop provisioning, its loop make-up information provisioning, and its pricing of unbundled network elements (“UNEs”).¹⁷ Verizon re-filed its Section 271 application on January 16, 2001, stating that this application “supplements that record in this respect, providing still further proof that Verizon satisfies the checklist in each and every respect.”¹⁸

More than 20 parties filed comments in this supplemental review, including the Department of Justice as required by Section 271.¹⁹ The vast majority of commenters conclude that Verizon’s revised application still does not merit approval.²⁰ Most importantly, both the Massachusetts Attorney General and the United States Department of Justice (“DOJ”) flatly oppose Verizon’s revised application because, *inter alia*, “Verizon provide[s] its competitors with poor DSL service in favor of its affiliate.”²¹ In addition, many significant “factual disputes” regarding the state of the record leaves the DOJ “unable to conclude on the current record that Verizon has adequately

¹⁶ *Ameritech Michigan 271 Order*, 12 FCC Rcd. at 20,568.

¹⁷ See “Statement of FCC Chairman William E. Kennard on Verizon 271 Filing” (rel. Dec. 18, 2000).

¹⁸ Supplemental Filing of Verizon New England, CC Docket No. 01-9 (Jan. 16, 2001) (“Verizon Supp. Filing”).

¹⁹ See 47 U.S.C. § 271(d)(2)(A).

²⁰ See Comments of ARC Networks at 13; Opposition of ASCENT at 3; Comments of ALTS at 4-5; Comments of AT&T Corp. at 24-30; Comments of Commercial Internet eXchange (“CIX”) at 8; Comments of CompTel at 1-2; Comments of Conversent Communications at 1; Comments of Covad Communications (redacted) at 2; Comments of Fiber Technologies LLC at 5; Comments of Global Crossing North America, Inc. at 3; Comments of Global Naps, Inc. at 1; Comments of WorldCom, Inc. at 1-2 (grant would be “contrary to the purpose and intent of Section 271”); Comments of RCN BocoCom LLC at 1; Rhythms NetConnections, Inc. Comments in Opposition (redacted) at 5; Comments of Sprint Communications Co. LLP at 2; Comments of WinStar at 1.

²¹ Massachusetts Attorney General’s Comments at 11.

demonstrated its ability to provide nondiscriminatory access to DSL loops.”²² The Commission is required by statute to consider each of these filings during this proceeding,²³ and has determined that it must “give substantial weight not only to the Department of Justice’s evaluation of the effect of BOC entry on long distance competition, but also to its evaluation of each of the criteria for BOC entry under section 271(d)(3).”²⁴

I. VERIZON MAY NOT RELY ON PROMISES OF FUTURE PERFORMANCE TO MAKE ITS SHOWING UNDER SECTION 271

The Commission has long held that an ILEC’s application for Section 271 relief “must be complete on the day it is filed,” and that “a BOC’s promises of *future* performance to address particular concerns raised by commenters have no probative value in demonstrating its present compliance with the requirements of section 271.”²⁵ Indeed, “paper promises do not, and cannot, satisfy a BOC’s burden of proof.”²⁶ As commenters have noted for the Commission, the bulk of Verizon’s Supplemental Filing comprises such “paper promises.”²⁷

Empty future promises are Verizon’s chief mode of addressing the significant concerns that the Commission and initial commenters have raised. For example, Verizon concedes that its loop provisioning performance, which will now be judged in accordance with Carrier-to-Carrier measurements modeled on the New York proceeding, will “continue to be refined in ongoing collaborative proceedings.”²⁸ In addition, Verizon states that its provisioning of line sharing²⁹ and loop make-up information will be tracked according to these same measurements.³⁰ The reliance on

²² Evaluation of the United States Department of Justice at 3 (Feb. 21, 2001) (“DOJ Evaluation”).

²³ 47 U.S.C. § 271(d)(2)(B).

²⁴ *Ameritech Michigan 271 Order*, 12 FCC Rcd. at 20,552; see also *Joint Application by SBC Communication, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision on In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217 ¶ 9 & n.24 (rel. Jan. 22, 2001) (“*SBC Kansas/Oklahoma 271 Order*”).

²⁵ *Ameritech Michigan 271 Order*, 12 FCC Rcd. at 20,573 (emphasis included).

²⁶ *Id.*

²⁷ See, e.g., CompTel at 3-5; Covad at 3; DOJ Evaluation at 2-3.

²⁸ Verizon Supp. Filing at 7; see also Lacouture/Ruesterholz Supp. Decl. ¶¶ 53-54.

²⁹ Lacouture/Ruesterholz Supp. Decl. ¶¶ 174, 176.

³⁰ Verizon Supp. Filing at 12.

these measurements is, as the DOJ shows, a new development since Verizon's withdrawal of its first application;³¹ they have not resulted in any substantial data that demonstrates Section 271 compliance. For purposes of the Commission's present review, these measurements simply do not exist, rendering Verizon's Supplemental Filing yet a premature attempt at interLATA relief.³²

Further, the Commission should note with suspicion some of the amended figures that Verizon has provided related to xDSL loop provisioning. As Rhythms and Covad have stated, Verizon's latest figures denoting timely loop provisioning exclude any late or non-working loop supplied to a carrier that participates in the loop acceptance testing process.³³ Thus, xDSL loops that reveal, after installation, some type of operating difficulty are erased from the Verizon study sample on the grounds that the "problem should have been uncovered during acceptance testing."³⁴ This new method of tracking performance is specious at best, for if a line is not operable, it matters little who should have detected the problem; a non-working loop is a non-provisioned loop in the eyes of the consumer awaiting DSL service.

In addition, the eleventh-hour PriceWaterhouseCoopers ("PWC") review of Verizon loop provisioning, which occurred on December 18, 2000 — the day that Verizon withdrew its first application, likewise merits cautious study. The PWC report as much as tells the Commission that the audit was not independent, nor was it compiled of data that PWC gathered first-hand. Rather, the report restates the conclusory assertions made by Verizon personnel. As Covad has pointed out, the report includes an express disclaimer that "[w]e [PWC] were unable to make any observations regarding the accuracy and completeness of source data provided by Verizon."³⁵

³¹ DOJ Evaluation at 2.

³² See *Ameritech Michigan 271 Order*, 12 FCC Rcd. at 20,574-75.

³³ Rhythms at 16-17; Covad at 11.

³⁴ Covad at 11 (*quoting* Verizon Sapienza/Mulcahy Joint Supp. Decl. ¶ 102).

³⁵ Covad at 17 (*quoting* Verizon Sapienza/Mulcahy Joint Supp. Decl. ¶ 22).

Verizon's Supplemental Filing is thus comprised of irrelevant "paper promises" and skewed or unverifiable data purporting to comply with the loop provisioning requirements of Checklist Item 4 of Section 271. This record simply does not support a Commission grant of InterLATA relief to Verizon at this time.

II. THE RECORD SHOWS THAT VERIZON HAS FAILED TO PROVIDE QUALITY xDSL-CAPABLE LOOPS IN A TIMELY AND EFFICIENT MANNER AS REQUIRED BY CHECKLIST ITEM 4

Verizon does not provide working xDSL-capable loops within the six-day interval it claims.³⁶ Indeed, as Rhythms notes, Verizon concedes in the Gertner/Bamberger Joint Supplemental Declaration that 95% of CLEC loops are installed within ~~six~~ *seven* days.³⁷ And loop installations requiring personnel dispatched were completed in 8.32 days.³⁸ Thus, in every instance in which a competitor's customer required some assistance from Verizon with her loop, a frequent occurrence in Verizon's legacy network, the interval increased by 2 ½ days. This data patently demonstrates that Verizon has not met its provisioning metric for xDSL-capable loops.

As to Verizon's interval measurements generally, the information in the Supplemental Filing is, and remains, murky. Due to the phenomenon of "sliding FOCs," or the instances in which Verizon provides multiple firm order commitment installation dates, each one later than the last, Verizon is able to make its performance appear more timely than it truly is. Only the last FOC appears on Verizon's system, and the installation date that last FOC provides is the only installation date on record. This practice masks the fact that customers must wait an average of 25 days between the date on which Verizon provides the first FOC and the date on which her loop is installed.³⁹ Yet even with this favorable reporting system, Verizon's Supplemental Filing still indicates that Verizon has not met the 95% benchmark for on-time installation.⁴⁰ Were the

³⁶ Verizon Supp. Filing at 15 (*citing* Verizon Lacouture/Ruesterhotz Supp. Decl. ¶ 63).

³⁷ Rhythms at 17 (*citing* Gertner/Bamberger Supp. Decl. ¶ 17).

³⁸ Rhythms at 11 (*citing* Gertner/Bamberger Supp. Decl.)

Commission to see the actual performance data, including the true intervals without sliding FOCs,⁴¹ a far more bleak outcome would result.

In addition, Verizon's own maintenance records indicate that 11.84% of loops provided to Covad did not work, as compared with only 2.81% of loops provided to Verizon's own customers.⁴² *One out of every ten Covad loops did not work upon installation in Massachusetts.* This fact alone demonstrates that Verizon's application is premature.

Poor provisioning of this magnitude has a debilitating effect on the ability of Massachusetts' remaining DSL carriers to serve customers. In short, it creates a crisis of public perception for their customers, for "it is the ISP that the customer perceives as the supplier of its broadband Internet access."⁴³ When loop installation fails or is late, it is the ISP that is discredited. This pattern will likely result in the "attrition" of ISPs in Massachusetts akin to the loss of four competitive DSL providers noted above. See Summary, *supra* at i.

III. PARTIES HAVE DEMONSTRATED THAT VERIZON HAS GENERALLY FAILED TO PROVIDE LINE SHARING, WHICH DISQUALIFIES IT FROM SECTION 271 RELIEF UNDER FCC PRECEDENT

The Commission has ordered all ILECs, including Verizon, to "provide nondiscriminatory access in accordance with . . . [its] rules and section 251(c)(3) of the Act to the high frequency portion of a loop to any requesting telecommunications carriers."⁴⁴ The instant record shows, however, that Verizon has not provided line sharing and line splitting in Massachusetts as required. In fact, Verizon has just three weeks ago informed CLECs that a substantial number of its COs are not equipped for these services. The paucity of Verizon's line sharing deployment in Massachusetts,

³⁹ Covad at 25.

⁴⁰ DOJ Evaluation at 9 (*citing* Verizon Lacouture/Ruesterholz Supp. Decl. at 3-4).

⁴¹ Covad states that 23.64% of its orders in Massachusetts received sliding FOCs. Covad at 25.

⁴² Covad at 11.

⁴³ CIX at 7.

⁴⁴ 47 C.F.R. § 51.319(h)(2).

depriving consumers of an efficient answer to broadband Internet access, must not be excused, let alone sanctioned by grant of 271 relief.

Verizon states in its Supplemental Filing that it “has taken extensive steps to assist competing carriers in the implementation of line sharing.”⁴⁵ The overwhelming majority of these steps involve only “workshops and seminars” and an “interim line sharing oversight process.”⁴⁶ As a matter of practical deployment, however, Verizon’s efforts are demonstrably limited. Verizon missed its promised due date of June 6, 2000 by which all DSL-collocated COs should have been ready for line sharing.⁴⁷ Four such COs remain unequipped today; over 200 linesharing orders submitted by Rhythms in the intervening period remain unfilled.⁴⁸ On February 1, 2001, Verizon informed Covad that 130 COs in New York and Massachusetts require “corrective action on build issues” related to line sharing.⁴⁹ Verizon instructed Covad not to attempt to turn up line-shared service to any additional Massachusetts customers until further notice.⁵⁰ In fact, any Covad order for line sharing in Massachusetts is now automatically rejected by Verizon’s systems.⁵¹

This evidence precludes a finding that “Verizon’s line sharing performance is strong.”⁵² Notwithstanding the 540,000 shared lines that Verizon provides to its own customers,⁵³ Verizon is apparently still developing line sharing for CLECs and must again rely on future promises of performance to meet its obligations. An ILEC cannot be judged to have opened its loops to fully competitive unbundling if only its own ADSL customers and affiliates have access to line sharing. As the FCC has stated in line sharing “is crucial for the deployment of broadband services to the

⁴⁵ Verizon Supp. Filing at 26.

⁴⁶ *Id.*

⁴⁷ Rhythms at 8.

⁴⁸ *Id.* at 10.

⁴⁹ Covad at 6-7 (citation omitted in original).

⁵⁰ *Id.* at 7.

⁵¹ *Id.* at 10.

⁵² Verizon Supp. Filing at 26.

⁵³ Covad at 4.

mass consumer market.”⁵⁴ Thus, Verizon’s level of performance, or rather non-performance, on line-sharing is unacceptable as a matter of Section 271 precedent.⁵⁵

IV. VERIZON’S LOOP MAKE-UP DATABASES ARE INEFFICIENT AND INCORRECT, IN VIOLATION OF SEVERAL COMMISSION ORDERS

The Commission has held that the provisioning of loop make-up information is a crucial step in providing CLECs with “a meaningful opportunity to compete.” This information must be provided in a nondiscriminatory fashion through exactly the same means that Verizon and its affiliate must use. Thus, “[a]n incumbent LEC does not meet the nondiscrimination requirement if it has the capability electronically to identify xDSL-capable loops . . . while competing providers are relegated to a slower and more cumbersome process to obtain that information.”⁵⁶ Further, ILECs must provide actual and correct loop make-up data, and “the relevant inquiry is not whether the retail arm of the incumbent has access to the underlying loops qualification information, but rather whether such information exists anywhere within the incumbent’s back office and can be accessed by any of the incumbent’s personnel.”⁵⁷ Verizon must show that its competitors in Massachusetts have such access or it will fail Section 271 review.⁵⁸ Verizon has not made this showing.

Several commenters have provided evidence that Verizon’s loop information provisioning is discriminatory and ultimately unhelpful.⁵⁹ ALTS writes that many of its members routinely receive answers to loop queries that read, quite improbably, “loop not qualified — length zero.”⁶⁰ In addition, the loop information in Verizon’s databases is often an inexact estimate of the loop’s actual

⁵⁴ *Line Sharing Order* ¶ 25.

⁵⁵ *Line Sharing Reconsideration Order* ¶ 20 & n.36; see generally *Ameritech Michigan 271 Order*, 12 FCC Rcd. at 20,570-574.

⁵⁶ *Advanced Services First Report and Order* ¶ 56.

⁵⁷ *UNE Remand Order* ¶ 430.

⁵⁸ See 47 U.S.C. § 271(c)(2)(A); see also *Ameritech Michigan 271 Order*, 12 FCC Rcd. at 20,468 (ILECs must show compliance with checklist by preponderance of the evidence).

⁵⁹ ALTS at 8-10; ASCENT at 11-14; CIX at 12, 15-18; Covad at 27-29; Rhythms at 12-17.

⁶⁰ ALTS at 9.

characteristics.⁶¹ Most troubling is that Verizon's loop information functionalities remain geared to Verizon's own specific needs, regardless of the FCC's requirement that CLECs receive 'unfiltered' loop data.⁶² For example, Verizon's LiveWire database does not cover any loop that utilizes Digital Loop Carrier ("DLC") facilities on the faulty assumption that the presence of such facilities automatically render the loop too long to support Verizon ADSL service.⁶³ As Covad succinctly states, "LiveWire informs the requesting CLEC whether the loop in question would support Verizon's retail ADSL service."⁶⁴

Verizon's loop information provisioning is therefore exactly contrary to the Commission's rules. As a result, CLECs and ISPs are denied the information upon which they rely to provide service. It serves no competitive purpose to permit ILECs to dole out loop data in accordance with their own needs; in order to be competitive, the members of USISPA must be able to go where ILECs do not go and to serve customers whom ILECs will not serve. By gating its loop information in Massachusetts, Verizon deprives our members of a "meaningful opportunity to compete." Its application for Section 271 therefore cannot be approved.

⁶¹ CIX at 15 (most loop lengths are averages and do not reflect actual lengths).

⁶² *SBC Kansas/Oklahoma 271 Order* ¶ 121; *see also UNE Remand Order* ¶¶ 427-431.

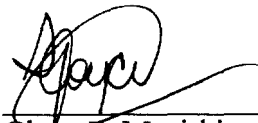
⁶³ CIX at 15-16.

⁶⁴ Covad at 28.

CONCLUSION

For these reasons, USISPA respectfully requests that the Commission (1) hold Verizon's application for 271 authorization in abeyance pending Verizon's conclusive demonstration that it provides CLECs with quality xDSL loops, line sharing, and loop make-up information in a timely and efficient manner in accordance with Checklist Item 4, 47 U.S.C. § 271(c)(2)(B)(iv), or (2) in the alternative, prescribe specific xDSL-loop provisioning conditions, including penalties, to ensure that Verizon achieves the required level of nondiscriminatory xDSL loop provisioning upon its entry into the long distance market.

Respectfully submitted,

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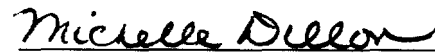
and

Dave Robertson
Chair, Advisory Board
USISPA

Dated: February 28, 2001

CERTIFICATE OF SERVICE

I, Michelle Dillon, certify that I have, on this 28th Day of February 2001, delivered one (1) copy of the foregoing document via First Class Mail or Courier ** to the persons listed below.


Michelle Dillon

Magalie R. Salas **
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Michael K. Powell
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